

Case 1:04-cv-12091-NMG Document 1 Filed 09/29/2004 Page 1 of 58963
RECEIPT # 58963
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DATE 9-29-04

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
IN CLERK'S OFFICE

2004 SEP 29 P 1:52 C.A. NO.

FREDERICK H. TARR, III,

Plaintiff

v.

TOWN OF ROCKPORT, MICHAEL
RACICOT, NICOLA BARLETTA,
CHARLES CLARK, ROXANNE TIERI and
JOANNE WILE,

Defendant

U.S. DISTRICT COURT
DISTRICT OF MASS.

NOTICE OF REMOVAL

04 12091 NMG

MAGISTRATE JUDGE Boule

Now come the defendants pursuant to the provisions of 28 U.S.C. §§1441 and 1446, and hereby file notice of the removal of this action from the Superior Court of the Commonwealth of Massachusetts, County of Essex, where it is currently pending, based upon the following grounds:

1. The plaintiff challenges his removal as a member of the Rockport Conservation Commission and asserts that the defendants deprived him of his right to due process (presumably pursuant to the Fourteenth Amendment of the U.S. Constitution, although is not explicitly pled) (Count I) and suppressed his right to free speech under the First Amendment to the U.S. Constitution and Article 16 of the Massachusetts Declaration of Rights (Count III). Complaint, ¶¶55, 78.

2. The plaintiff also asserts supplemental state law claims purporting to appeal the decision of the defendants to remove him from the Conservation Commission pursuant to G.L.

c.249 §4 (Count II), and alleges that the defendants engaged in “misfeasance” (Count IV) and “malfeasance” (Count V), both of which are components of the tort of negligence.

3. This Court has jurisdiction over the plaintiff's constitutional claims pursuant to 28 U.S.C. §1441.

4. This Removal is timely, as this action was first served on the defendant on September 7, 2004.

5. All defendants have consented to the removal of the matter to the United States District Court for the District of Massachusetts.

SIGNED PURSUANT TO RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

DEFENDANTS,

By their attorneys,

SD KL

Darren R. Klein (BBO# 567354)
Katharine Goree Doyle (BBO# 634131)
Kopelman and Paige, P.C.
Town Counsel
31 St. James Avenue
Boston, MA 02116
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by (hand) (mail) on 9/29/04

K Doyle

